

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

DEMARIO LAMONT MOSLEY,

Defendant and Appellant.

E071928

(Super.Ct.No. RIF1503800)

OPINION

APPEAL from the Superior Court of Riverside County. Emma C. Smith, Judge.

Affirmed.

William D. Farber, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

**FACTUAL AND PROCEDURAL HISTORY**

**A. PROCEDURAL HISTORY**

On June 23, 2016, a first amended information charged defendant and appellant Demario Lamont Mosley with burglary of an inhabited dwelling under Penal Code

section 459 (count 1); robbery under Penal Code section 211 (count 2); and kidnapping under Penal Code section 209, subdivision (b) (count 3).<sup>1</sup> The information also alleged a criminal street gang enhancement under Penal Code section 186.22 for all three counts. Moreover, based on a prior robbery conviction, the information alleged (1) one prior violent felony conviction for which defendant had served a separate term in state prison under Penal Code section 667.5, subdivision (a); (2) one prior serious felony conviction under Penal Code section 667, subdivision (a); and (3) one prior serious and violent felony conviction under Penal Code sections 667, subdivisions (c) and (e)(1), and 1170.12, subdivision (c)(1).

On August 11, 2016, defendant moved to sever his case from his codefendant for trial. On September 26, 2016, the court denied defendant's motion.

On August 25, 2017, defendant moved to discharge and substitute his counsel under *People v. Marsden* (1970) 2 Cal.3d 118. He, however, withdrew his motion in open court on June 4, 2018.

On October 28, 2018, pursuant to a negotiated plea agreement, in exchange for a 22-year prison sentence, defendant pled guilty to count 1 (burglary under Pen. Code, § 459) and count 2 (robbery under Pen. Code, § 211). Moreover, defendant admitted the alleged criminal street gang enhancement under Penal Code section 186.22, subdivision (b)(1)(C) as to both counts; one prior serious felony conviction under Penal Code section

---

<sup>1</sup> The information also charged codefendant Kejuan Darcell Clark in counts 4 and 5. The case against defendant was resolved separately. Therefore, we will only address the charges involving defendant.

667, subdivision (b); and one prior serious and violent felony conviction under Penal Code section 667, subdivisions (c) and (e)(1), and Penal code section 1170.12, subdivision (c)(1). The trial court found a factual basis for defendant's plea. The court also found that defendant knowingly, freely, voluntarily, and intelligently understood his constitutional rights, and that defendant waived them. The court then accepted defendant's guilty pleas as to counts 1 and 2, and his admissions.

On November 13, 2018, pursuant to the terms of the plea agreement, the trial court dismissed count 3, and sentenced defendant to a total term of 22 years in prison. The court also imposed fines and fees, and awarded custody credits.

On December 31, 2018, defendant filed a timely notice of appeal. The notice specified that the appeal challenges the validity of the plea in this case. Defendant requested a certificate of probable cause, which the court granted on January 4, 2019.

#### B. FACTUAL HISTORY

At the hearing wherein defendant pled guilty, the prosecutor recited the factual basis for defendant's plea to which he agreed. As to count 1, defendant admitted that he "committed a violation of Penal Code section 459, the first felony, in that on or about July 25th, 2015, in the county of Riverside, state of California, [he] did willfully and unlawfully enter a certain building, to wit, an inhabited dwelling house [] with the intent to commit theft and a felony." As to count 2, defendant admitted that he "committed a violation of Penal Code section 211, a felony, in that on or about July 25th, 2015, in the county of Riverside, state of California, [he] did, while voluntarily acting in concert with two or more persons, [he] did willfully and unlawfully enter an inhabited dwelling house

and by means of force and fear take personal property from the person, possession, and immediate presence of Jane Doe within the meaning of Penal Code section 213, subdivision (a), subsection (1), subparagraph (A)[.]” As to both counts, defendant also admitted that he committed both offenses at the direction of or “in the association with a criminal street gang with the specific intent to promote, further, and assist in any criminal conduct by gang members” under Penal Code section 186.22, subdivision (b)(1)(C).

Moreover, defendant stipulated that the felony plea form set forth additional language with respect to the factual basis. The plea form stated: “I agree that I did the things that are stated in the charges that I am admitting.” The plea form also provided that defendant admitted that he committed the offenses “in association with a criminal street gang with the specific intent to promote further criminal conduct by gang members.”

Furthermore, during the hearing, defendant admitted that he sustained the alleged prior serious and violent felony robbery conviction under section 211, on or about October 2, 2008, in Los Angeles County.

## **DISCUSSION**

After defendant appealed, and upon his request, this court appointed counsel to represent him. On May 20, 2019, counsel filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues, and requesting this court to undertake a review of the entire record. We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the

mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no error.

**DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER  
Acting P. J.

We concur:

CODRINGTON  
J.

RAPHAEL  
J.